DISTRICT OF COLUMBIA BOARD OF EDUCATION

NOTICE OF FINAL RULEMAKING

The Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, §38-101, et seq., hereby gives notice of final rulemaking action taken by the Board at its meeting held on September 17, 2003, to replace an existing section and add a new section to Chapter 1, Bylaws of the Board of Education, Board Rules (Title 5 of the D.C. Municipal Regulations). The rulemaking provides for employment by the Board of Education of an executive secretary and defines the functions of the position and clarifies that the Director of Charter School Oversight is appointed and serves at the pleasure of the Board.

The final rulemaking will take effect upon the publication of a Notice of Final Rulemaking in the D.C. Register. Proposed rulemaking on this subject was published in the D.C. Register on August 1, 2003.

Existing Section 104.10 is deleted in its entirety and replaced with a new Section 104.10 as follows:

~~104.10 The Board may establish and provide for the appointment of clerical, secretarial, and professional personnel necessary for providing direct staff services to the Board.~~

104.10 The Board shall appoint an Executive Secretary to act as custodian of the records of the Board, certify and maintain the proceedings of the Board, and conduct and supervise the daily business of the Office of the Board, which includes its activities as State Education Agency, chartering authority and policy-maker for the public schools of the District of Columbia. The Executive Secretary shall prepare a record of Board proceedings as required by law or this chapter; an shall perform all other duties authorized by law, this chapter, or official acts of the Board, or as assigned by the Board.

New section 104.11 is added as follow:

104.11 The Board shall appoint a Director of the Office of Charter School Oversight, who shall serve at the pleasure of the Board.

DISTRICT OF COLUMBIA BOARD OF EDUCATION

NOTICE OF FINAL RULEMAKING

The Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, §38-101, et seq., hereby gives notice of final rulemaking action taken by the Board at its meeting held on September 17, 2003 to amend Chapter 1 of the Board Rules, Title 5 of the D.C. Municipal Regulations, regarding the By-Laws of the Board of Education.

The purpose of these amendments is to establish that the Board will consider and exercise its responsibilities as the State Education Agency by requiring that the Board hold separate monthly meetings to take action on state and local policy issues.

The final rulemaking will take effect upon the publication of a Notice of Final Rulemaking in the D.C. Register. Proposed rulemaking on this subject was published in the D.C. Register on August 1, 2003.

Section 105 is amended as follows:

105. MEETINGS OF THE BOARD OF EDUCATION; REGULAR MEETINGS

105.1 The Board shall hold separate regular monthly business meetings in the months of September through July of each year to take actions on respectively state education policy and local education policy. The Board may coordinate its regular monthly meetings to be consecutive; provided, however, that these meetings shall not be held concurrently.

105.2 Unless specifically changed by the Board, the regular meetings shall be held on the third Wednesday of each month at a time and place established by the Board.

105.3 The agenda of the regular meetings of the Board shall include the following:

(a) A report of the Superintendent, which may include items for the information of the Board, items for referral to Board committees, and items requiring official action by the Board;

(b) A report of the Executive Secretary to the Board which shall include approval of the journal of proceedings of the Board and accompanying transcripts, and

which may include items for the information of the Board, items for referral to Board committees, and items requiring official action by the Board;

(c) A report from each standing and ad hoc committee which may include items for the information of the Board and recommendations requiring official action by the Board;

(d) A report of the President of the Board which may include any item for the information of the Board; and

(e) Provision for time for any member of the Board to present items for the information of the Board or for referral by the chair to a Board committee.

105.4 The recommendations contained in a committee report that require official Board action shall be automatically placed on the floor as main motions without requiring a second.

105.5 Items requiring official action by the Board which are presented by the Superintendent or the Executive Secretary, pursuant to § 105.3, may be placed on the floor for action or referred to the appropriate Board committee for consideration and recommendation at the discretion of the chair.

105.6 Items not on the agenda may be added for information or referral to the appropriate Board committee at the discretion of the chair.

105.7 The following items may be placed on the floor for action under a waiver of the rules:

(a) Items not on the agenda;

(b) Items that have been referred to committee by the chair pursuant to § 105.5; and

(c) Items presented under §§ 105.3(d) and 105.3(e).

105.8 The President shall prepare a consent agenda for each regular meeting which shall include those matters that the President believes will be adopted by unanimous vote. The consent agenda shall be approved by the Committee of the Whole at its meeting immediately preceding the regular meeting for which the agenda was prepared; Provided, that the consent agenda is circulated by the President in advance of the Committee of the Whole meeting.

105.9 Any member may strike a matter from the consent agenda at the Committee of the Whole meeting or at the regular meeting prior to the vote on the consent agenda or by a written objection submitted to the Executive Secretary prior to the meeting. Matters removed from the consent agenda shall be considered in accordance with §§ 105.3 and 105.4.

105.10 Items remaining on the consent agenda shall be approved by the Committee of the Whole and shall be considered at the next regular meeting as part of the agenda established in accordance with § 105.3. Approval of the consent agenda during the regular meeting shall include the unanimous approval of all matters included in the consent agenda.

Section 109 is amended as follows:

109 COMMITTEES OF THE BOARD OF EDUCATION

109.1 The President of the Board of Education shall annually propose a standing committee structure for adoption by resolution of a majority of the full Board.

109.2 The standing committee structure shall establish the name, number of members, and jurisdiction of each standing committee of the Board.

109.3 The Board of Education may establish ad hoc committees at any time by resolution of a majority of the full Board, which shall set forth the name, number of members, and purpose of the ad hoc committee.

109.4 An ad hoc committee shall be dissolved upon the submission of a final report and recommendation(s) to the Board, or the expiration of a specified term of the committee if set forth in the establishing resolution, or by vote of a majority of the full Board.

109.5 Standing and ad hoc committees of the Board shall not have executive power unless specifically provided by the rules of the Board of Education or unless specifically delegated to the committee to deal with a particular matter by official action of the Board.

109.6 The chairperson of a standing or ad hoc committee shall preside over committee meetings, establish the agenda of the committee meetings, and prepare and present the report of the committee to the Board of Education.

109.7 The chairperson of a committee may appoint a chairperson pro tempore to assume the duties of the chair in the absence of the chairperson.

DISTRICT OF COLUMBIA
BOARD OF EDUCATION

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Education ("Board"), pursuant to the authority set forth in D.C. Code, 2001 Edition, Section 38-101, et seq., hereby gives notice of final rulemaking action taken by the Board at its meeting held on September 17, 2003, to amend Chapter 30 of the Board Rules, Title 5 of the D.C. Municipal Regulations regarding special education.

The final rulemaking will take effect upon publication of a Notice of Final Rulemaking in the D.C. Register. Proposed rulemaking on this subject was published in the D.C. Register on July 27, 2003.

Section 3001.1 (definition of "Developmental Delay") is amended as follows:

Developmental Delay – a condition in which a child, three through seven years of age:

(a) experiences severe developmental delays of at least two years below his or her chronological age and/or at least two standard deviations below the mean, as measured by appropriate standardized diagnostic instruments and procedures, in one or more of the following areas:

1.Physical development;

2.Language and communication development;

3.Social or emotional development;

4.Sensory motor-integration development; or

5.Adaptive development; and

(b) due to the delay(s) described above, requires special education and related services.

No child shall be classified as having "Developmental Delay" based solely on deficits in the area of social and/or emotional development.

"Developmental Delay" does not apply to children with the following disabilities:

(a) autism;

(b) traumatic brain injury;

(c) mental retardation;

(d) emotional disturbance;

(e) other health impairment;

(f) orthopedic impairment;

(g) visual impairment, including blindness;

(h) hearing impairment, including deafness; or

(i) speech/language impairment.

Section 3001.1 (definition of "Parent Surrogate") is amended as follows:

Surrogate Parent– an individual who is appointed by the LEA to advocate for the child with a disability, or a child suspected of having a disability, during evaluation through possible placement, when no parent can be identified or the whereabouts of parents cannot be determined or if the child is a ward of the District, as needed.

Section 3002.2 is amended as follows:

3002.2 Provision of FAPE Not Required

(a) The LEA shall not be obligated to provide FAPE to a child with a disability aged eighteen to twenty-two who, in the last educational placement prior to incarceration in an adult correctional facility:

(1) Was not actually identified as being a child with a disability under § 3004 of this Chapter; and

(1) Did not have an IEP under § 3007 of this Chapter.

(b) The exception in subsection (a) above does not apply to a child with disability, aged eighteen to twenty-two, who:

(1) Had been identified as a child with a disability and had received services in accordance with an IEP, but who left school prior to his or her incarceration; or

(2) Did not have an IEP in his or her last educational setting, but who had actually been identified as a "child with a disability" under section 3001 of this Chapter.

(c) The LEA shall not be obligated to provide FAPE to children with disabilities who

have graduated from high school with a regular high school diploma. This provision does not apply to children with disabilities who have graduated, but who have not been awarded a regular high school diploma. In the District, the achievement of the GED is the equivalent of graduating with a regular high school diploma.

Section 3003.1 is amended as follows:

3003.1 The IEP team for each child with a disability shall include:

(a) The parents of the child;

(b) At least one regular education teacher of the child, if the child is or may be participating in the regular education environment, or if the child is being evaluated for SLD;

(c) At least one special education teacher, or, if appropriate, at least one special education provider of the child;

(d) A representative of the LEA who is:

(1) Qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, and

(2) Knowledgeable about the general curriculum and about the availability of resources of the LEA;

(e) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in §§ (a) through (d) of this section, or for a child being evaluated for SLD, a person qualified to conduct individual diagnostic evaluations;

(f) Other individuals, at the discretion of the parent or the LEA, who have knowledge or special expertise regarding the child, including related services personnel, if appropriate; and

(g) The child, if appropriate.

Nothing in this section shall preclude the LEA from designating an advocate to assist the parent as a member of the team, with the consent of the parent.

Section 3003.6 is amended as follows:

3003.6 Parental Participation

(a) The LEA shall take the steps set out in subsections (b) through (h) of

this section to ensure that one or both of the parents of the child with a disability are present or are afforded an opportunity to attend and participate at all meetings of the IEP team.

(b) The parent of a child with a disability shall be provided with notice early enough to ensure that he or she will have an opportunity to attend the meeting.

(c) Efforts to obtain the participation of the parent include:

(1) Scheduling the IEP meeting at a mutually agreed upon time and place; and

(2) Indicating, as part of the written notice:

(i) The purpose, time, date, and location of the meeting;
(ii) Who will be in attendance; and
(iii) That parents may bring other individuals to participate on the IEP team who have knowledge or special expertise regarding the child.

(d) For a child with a disability who is fourteen years old, or younger if appropriate, the written notice shall indicate that:

(1) a purpose of the meeting will be the development of a statement of the transition services needs of the child; and

(2) the LEA will invite the child.

(e) For a child with a disability who is sixteen years old, or younger if appropriate, the written notice shall:

(1) include the information in paragraph (d) above;
(2) indicate that a purpose of the meeting will be the development of a statement of the transition services needed by the child; and
(3) identify any other agencies that will be invited to send a representative.

(f) If neither parent can attend, the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.

(g) A meeting may be conducted without a parent in attendance if the LEA:

(1) Is unable to convince the parent to attend and the LEA has a record of its attempts to arrange a mutually agreed on time and place, such as:

(i) Detailed records of telephone calls made or attempted and the results of those attempts;

(ii) Copies of correspondence sent to the parent and any responses received; or

(iii) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(h) The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for a parent with deafness or whose native language is other than English and providing material and/or handouts in the parent's native language where available.

(i) The LEA shall provide a copy of the IEP to the parent at no cost to the parent.

Section 3006.6 is amended as follows:

3006.6 The IEP team may not determine that a child is a child with a disability if it determines that the determinant factor for the child's eligibility determination is:

(a) lack of instruction in reading or mathematics; or limited English proficiency; and
(b) the child does not otherwise meet the eligibility criteria.

Section 3022.1 is amended as follows:

3022.1 The LEA shall ensure that the rights of a child with a suspected or identified disability are protected by the appointment of a surrogate parent when:

(a) A parent cannot be identified, or
(b) The LEA, after reasonable efforts cannot discover the whereabouts of a parent.
(c) The child with a suspected or identified disability who is a ward of the District, where needed.

Section 3027.5 is amended as follows:

3027.5 Maximum hourly rates and total amounts to be paid for independent evaluations and services shall be determined periodically by the SEA. The schedule for such rates and amounts shall be commensurate with customary and prevailing rates for the evaluation or service involved and consistent with

the criteria used by the LEA when it initiates such evaluations and services. The schedule for such rates and amounts shall be set by the Superintendent or his or her designee and those rates shall be sent to the Board of Education for ratification at its next scheduled meeting. Exceptions to the rates and amounts established by the Superintendent or his or her designee may be made where the requesting party can demonstrate unique circumstances justifying the payment of costs exceeding the established maximum rates or amounts.

Section 3029.5 is amended as follows:

3029.5 As a part of the five-day disclosure submitted before a due process hearing, the submitting attorney must disclose any financial interest, of which he or she is aware, of any participant in the proceeding in a non-public provider or service that may be at issue in that due process hearing.

Section 3030.3 is added as follows:

3030.3 The LEA shall bear the burden of proof, based solely upon the evidence and testimony presented and testimony presented at the hearing, that the action or proposed placement is adequate to meet the educational needs of the student.

THE DISTRICT OF COLUMBIA
LOTTERY AND CHARITABLE GAMES CONTROL BOARD

NOTICE OF FINAL RULEMAKING

The Executive Director of the District of Columbia Lottery and Charitable Games Control Board, pursuant to the authority set forth in D.C. Official Code §3-1306, District of Columbia Financial Responsibility and Management Assistance Authority Order issued September 21, 1996, and Office of the Chief Financial Officer Financial Management Control Order No. 96-22 issued November 18, 1996, hereby gives notice of the adoption of amendments to Chapters 5, 6 and 10 of Title 30 DCMR, "Lottery and Charitable Games." No substantive changes have been made to the text of the emergency and proposed rules published in the D.C. Register on August 15, 2003 at 50 DCR 6732. The final rules will be effective upon publication of this notice in the D.C. Register.

AMEND CHAPTER 5, "GENERAL PROVISIONS"

Amend section 500.6 to read as follows:

500.6 The purchaser of a lottery ticket shall be bound by, and subject to, all Agency rules, regulations, game or other instructions, issuances, policies, procedures, and the Executive Director's determinations and decisions, except that the denial of a prize claim pursuant to Chapter 6 of this title may be appealed in accordance with Chapter 4 of this title.

AMEND CHAPTER 6, "CLAIMS AND PRIZE PAYMENTS"

Amend section 611 to read as follows:

611 DISCHARGE OF LIABILITY UPON PAYMENT

611.1 Payment of any prize, including a POWERBALL® or Daily Millions prize, or a prize awarded pursuant to Chapter 10 of this title, shall discharge the District of Columbia, the Agency, the Multi-State Lottery Association, and their members, product groups, officers, employees, agents and attorneys, representatives, and contractors of all liability for payment of the prize.

611.2 [DELETED]

Amend section 614.1 to read as follows:

614.1 Pursuant to D.C. Code §2-536(6) (2001), a prizewinner's name, city, county and state of residence, winnings, and all associated game, play and prize information are records, or a portion of records, required to be made available to the public. Information about or concerning prizewinners or participants in Agency activities authorized at Chapter 10 of this title may also be contained in records, or a portion of records, required to be made available to the public pursuant to D.C. Code § 2-531 through § 2-539 (2001).

Amend section 614.3 to read as follows:

614.3 The Executive Director may direct that prizewinners, or participants in Agency activities authorized at Chapter 10 of this title, be photographed or videotaped to complete the Agency's records and for the purposes identified in § 614.4.

Amend section 614.4 to read as follows:

614.4 A prizewinner, or participant in Agency activities authorized at Chapter 10 of this title, consents, without further consideration or expectation of payment, to the Agency's use of the prizewinner's name, county, city and state of residence, the games played, the amount of the prize and any photographic or video-graphic replication of the prizewinner's likeness or image for promotional purposes. "Promotional purposes" shall include, without limitation, advertising, publication and promotion of the Agency, its games, programs, contests and other activities in any print, broadcast, electronic, Internet or other form or media whatsoever.

Add section 614.5 to read as follows:

614.5 Each prizewinner, or participant in Agency activities authorized at Chapter 10 of this title, releases the District of Columbia, the Agency, Multi-State Lottery Association, and their respective game groups, members, officers, employees, agents and attorneys, representatives, and contractors from all claims and liability arising out of, or related to, the promotional purposes, and use of the information and likenesses, set out in § 614.4.

Add section 614.6 to read as follows:

614.6 The provisions of § 614.4 and § 614.5, which are applicable to prizewinners shall also apply to any person who presents a prize claim that is later denied or forfeited for any reason.

AMEND CHAPTER 10, "OTHER GAMES"

Add Section 1000.9 to read as follows:

1000.9 A participant or entrant in any Agency sweepstakes, contest, bonus game, second chance drawing, or other promotional game, device or campaign authorized by this Chapter shall be bound by, and subject to, all Agency rules, regulations, game or other instructions, issuances, policies, procedures, and the Executive Director's determinations and decisions.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 02-34
Z.C. Case No. 02-34
(Text Amendments – 11 DCMR)
(Optical Transmission Nodes)
September 8, 2003

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1; hereby gives notice of the adoption of the following amendments to § 199 (Definitions), § 509 (Utilities (SP)), § 608 (Utilities (CR)) § 701 (Uses as a Matter of Right (C-1)), § 907 (Utilities (W)), and Chapter 21 (Off-Street Parking Requirements) of the Zoning Regulations (Title 11 DCMR). The amendments permit Optical Transmission Nodes (OTNs) as a matter of right within the Commercial and Industrial Districts and subject them to special exception review within the Special Purpose, Waterfront, and Mixed Use Zone Districts. The Commission took final action to adopt the amendments at a public meeting held on September 8, 2003.

This final rulemaking is effective upon publication in the *D.C. Register*.

The Commission initiated this rulemaking in response to a petition from the Office of Planning (OP). The proposed text amendments will implement § 200.10 of the Economic Development Element of the Comprehensive Plan, Title 10 DCMR, which calls for the attraction of new industries representative of advanced technologies.

Existing Regulations

As the proposed definition indicates, an OTN is an "interior or exterior facility that is utilized as remote terminal units for the operation of such things as cable television systems, high-speed internet access, and interactive video, not including any broadcast antenna or related towers for the transmission of radio waves". In the absence of specific regulations, OTNs are currently regulated as if they were commercial broadcast antennas, which is not an accurate representation of their operations and function. Their function and building requirements are significantly different from broadcast antennas. OTNs transmit, or relay, pulses along fiber optic lines and do not transmit radio waves through the air. This text amendment will provide specific language to permit OTNs as a distinct use, separate from antennas.

Currently, commercial broadcast antennas are permitted only as special exceptions in all Zone Districts. The Commission's proposed revisions to the antenna regulations would not regulate broadcast antennas as such. Instead, antennas and antenna towers are addressed separately, with the latter first permitted as special exceptions beginning in the C-2 Zone District. Since OTNs do not involve antennas or towers, neither the current nor proposed rules adequately regulate their use.

Description of Text Amendment

The text amendment defines OTNs in the manner noted above and provides specific language to permit OTNs as a distinct use, separate from antennas. Generally, OTNs will be permitted as a matter of right in Commercial and Industrial Zone Districts and as a special exception in the Special Purpose (SP), Mixed Use (CR), and Waterfront (W) Zone Districts.

The OP recommended OTNs as a matter of right use within all Commercial (C), and Industrial Zone Districts (CM and M) because the use is believed to be compatible with the commercial and industrial nature of these districts. OP further recommended that the use be permitted only by special exception within the Special Purpose (SP), Mixed Use (CR), and Waterfront (W) Zone Districts under the same provisions as apply to a Utility, pursuant to §§ 509, 608, and 907, respectively. The consideration as a special exception use in these zone districts is based on the utility nature of an OTN. OTNs provide for the extension of interactive video and high speed internet service that would be desirable to commercial and residential areas. The use may be appropriate in these areas, because the location may accommodate service delivery to both commercial and residential areas from one location.

Relationship to the Comprehensive Plan

The Comprehensive Plan, under § 200.10, recommends the "*attraction of new industries representative of advanced technologies*". OTNs are representative of advanced technologies. In addition, § 1109.1 of the Comprehensive Plan expresses the intent to "encourage the growth of center of high technology, research and development and to provide for essential support services and nonpolluting production activities."

Public Hearing

The Commission held a public hearing on this case on March 24, 2003. During the hearing, members of the Commission expressed concern over the impact of OTNs on adjacent residential zone districts. Following the public hearing, the record was held open until April 4, 2003, to allow Comcast Cable to submit their comments in writing and to allow the Office of Planning to submit a supplemental report in response to questions from the Commission.

Proposed Action

At the April 14, 2003 public meeting of the Zoning Commission, the Commission reviewed the letter submitted by Comcast Cable of the District of Columbia and the supplemental report of the Office of Planning.

The letter from Comcast Cable stated that the proposed rule was to control the housing of OTNs and not the facilities. Comcast Cable suggested that the proposed text be revised to indicate that it is the facility that will require special exception approval so as to avoid an interpretation that interior construction within an existing building requires a special exception. The Commission agreed to this change.

The supplemental report from the Office of Planning addressed the Commission's concerns that OTNs within commercial or industrial zoning districts could adversely affect residential uses within residential zoning districts located across a street from an OTN. The Office of Planning concluded OTNs are quiet uses that do not generate noise or traffic, and they were more likely to act as a buffer between the residential uses and other more potentially intrusive commercial or industrial uses. The Commission agreed with the Office of Planning and made no additional requirements for the use.

Following discussion, the Commission took proposed action pursuant to 11 DCMR § 3027.2 to approve the advertised text, with the modification discussed above. A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 30, 2003 at 49 DCR 4584, for a 30-day notice and comment period.

The proposed rulemaking was referred to the National Capital Planning Commission (NCPC) under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated July 1, 2003, found that the proposed text amendments, which provide a definition and regulations for Optical Transmission Nodes, would not adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

No other comments were received.

The Office of the Corporation Counsel has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

The Commission took final action to adopt the rulemaking at its regularly scheduled public meeting on September 8, 2003. No substantive changes were made to the advertised prepared text.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to Chapters 1, 5, 6, 7, 9, and 21 of the Zoning Regulations, Title 11 DCMR. Added wording is in bold and underlined, and deleted wording is shown in strike-through lettering:

A. Chapter 1, THE ZONING REGULATIONS, § 199.1, Definitions, is amended by inserting the following definitions of "Optical Transmission Node" in alphabetical order:

Optical Transmission Node – an interior or exterior facility that is utilized as remote terminal units for the operation of such things as cable television systems, high-speed internet access and interactive video, not including any broadcast antenna or related towers for the transmission of radio waves

B. Chapter 5, SPECIAL PURPOSE DISTRICTS, is amended by adding a new § 509.2 and amending § 509.3, to read as follows:

509 UTILITIES (SP)

509.2 ~~[DELETED]~~

Use as an optical transmission node shall be permitted in an SP District if approved by the Board of Zoning Adjustment in accordance with the conditions specified in § 3104, subject to the following:

(a) **Any new construction of a freestanding structure used primarily for the purpose of housing an optical transmission node shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and**

(b) **There shall be no advertisement on the structure.**

509.3 The utilities allowed in § 509.1 **and optical transmission nodes in § 509.2** shall be subject to requirements for setbacks, screening, or other requirements, as the Board deems necessary for the protection of neighboring or adjacent property.

C. Chapter 6, MIXED USE (Commercial Residential) DISTRICTS, is amended by amending § 608.1, adding new § 608.2, and renumbering § 608.2, to read as follows:

608 UTILITIES (CR)

608.1 Use as an electric substation, natural gas regulator station, public utility pumping station, **optical transmission node,** or telephone exchange, shall be permitted in a CR District when authorized by the Board of Zoning Adjustment under § 3104, if the Board considers that this use is appropriate in furthering the objectives of the CR District, subject to the provisions of this section.

608.2 **Any new construction of a freestanding structure used primarily for the purpose of housing an optical transmission node shall be subject to the following:**

(a) The structure shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and

(b) There shall be no advertisement on the structure.

608.~~2~~ **3** The Board may impose any requirements for setbacks, screening, or other safeguards that it deems necessary for protection of the neighborhood.

D. Chapter 7, Commercial Districts, is amended to read as follows:

701 USES AS A MATTER OF RIGHT (C-1)

701.6 The following uses shall be permitted in a C-1 District as a matter of right:

(h) Hotel or inn; ~~**and**~~

* * *

(j) Optical Transmission Node.

E. Chapter 9, WATERFRONT DISTRICTS, is amended by amending § 907.1, adding a new § 907.2, and renumbering §§ 907.3 and 907.4 as follows:

907 UTILITIES (W)

907.1 If the Board of Zoning Adjustment considers that it is appropriate in furthering the objectives of the Waterfront District, an electric substation, natural gas regulator station, public utility pumping station, **optical transmission node,** or telephone exchange shall be permitted as a special exception in a Waterfront District when authorized by the Board under § 3104, subject to the provisions of this section.

907.2 **Any new construction of a freestanding structure used primarily for the purpose of housing an optical transmission node shall be subject to the following:**

(a) The structure shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and

(b) There shall be no advertisement on the structure.

907.~~2~~3 The Board shall establish requirements for setbacks and screening.

907.~~3~~4 The Board shall establish other safeguards as deemed necessary for protection of the neighborhood.

F. Chapter 21, OFF-STREET PARKING REQURIEMENTS, is amended by adding the following use:

2101.1 On and after May 12, 1958, all buildings or structures shall be provided with parking spaces as specified in the following table:

USES	NUMBER OF PARKING SPACES PROVIDED
Optical Transmission Nodes: All Districts	**1 for each 3,000 ft.^{2} of gross floor area**

Vote of the Zoning Commission taken at its public meeting on April 14, 2003, to **APPROVE** the proposed rulemaking: **4-0-1** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and James H. Hannaham to approve; Peter G. May abstaining by absentee ballot).

This Order and Final Rulemaking were **ADOPTED** by the Zoning Commission at its public meeting on September 8, 2003, by a vote of **5-0-0** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Peter G. May and James H. Hannaham to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on _____.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 959-A
Z.C. CASE NO. 00-04TA
(Text Amendment – 11 DCMR)
(Miscellaneous Technical Corrections)

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2001 Ed.)), and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of the adoption of a rulemaking generating several minor, technical modifications to the Zoning Regulations, Title 11, DCMR. The amendments were to Chapter 4 and §§ 1799, 2100, and 3041.

The Commission took proposed action pursuant to 11 DCMR § 3027.2 at its regularly scheduled monthly meeting on February 24, 2003, to approve the proposed amendments. Because this rulemaking was undertaken pursuant to the Commission's Consent Calendar procedures in 11 DCMR § 3030, no hearing was held.

No comments were received and no changes have been made to the text of the proposed rules, as published with the notice of proposed rulemaking in the *D.C. Register* on February 28, 2003, at 50 DCR 1918. These final rules will be effective upon publication of this notice in the *D.C. Register*.

The Commission initiated this case to make additional minor editorial amendments to the Zoning Regulations to correct errors and to improve the readability of the regulations. The amendments (1) include a reference to R-4 in the Table of Contents and the heading for § 410; (2) correct an incomplete reference to the Housing Production Trust Fund in the definitions section; (3) change the phrase "parking facilities" to "parking spaces" in § 2100 to provide further clarity; and (4) correct a typographical error in § 3041.1(b) which stated a dollar amount that was inconsistent with a prior rulemaking.

A comment period of ten (10) days was provided for this rulemaking. A shortened notice period is permitted under § 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a) (2001 Ed.)), upon good cause shown.

Based on the above, the Commission finds that the proposed amendments are minor modifications to previously approved rulemakings, in the best interests of the District of Columbia, consistent with the purpose and intent of the Zoning Regulations and Zoning Act, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders **APPROVAL** of the following amendments to the Zoning Regulations, Title 11 DCMR:

A. Amend Chapter 4, RESIDENCE DISTRICTS: HEIGHT, AREA, AND DENSITY REGULATIONS, as follows:

1. Amend the Table of Contents by inserting the phrase "and R-4" between "R-5" and the word "Districts".

2. Amend the heading for § 410 by inserting the phrase "**AND R-4"** between "**R-5**" and the word "**DISTRICTS**".

B. Amend § 1799.1, definition of **Housing Trust Fund**, by inserting the word "**Production"** between the words "**Housing**" and "**Trust**".

C. Amend Chapter 21, OFF-STREET PARKING REQUIREMENTS, § 2100 as follows:

1. Amend the Table of Contents, by striking the word "**Facilities**" and inserting the word "**Spaces**" in its place.

2. Amend the heading for § 2100 by striking the word "**FACILITIES**" and inserting word "**SPACES**" in its place.

D. Amend § 3041.1(b) by striking the phrase "two hundred dollars ($200)" and inserting the phrase "one thousand two hundred and fifty dollars ($1,250)" in its place.

Vote of the Zoning Commission taken at its public meeting on February 24, 2003, to adopt the proposed rulemaking: 5-0-0 (Carol J. Mitten, Peter G. May, Anthony J. Hood, John G. Parsons, and James H. Hannaham to **APPROVE**).

This order was adopted by the Zoning Commission at its public meeting on April 14, 2003, by a vote of 5-0-0 (Anthony J. Hood, Carol J. Mitten, John G. Parsons, James H. Hannaham, and Peter G. May (by absentee ballot) to **ADOPT** Z.C. Order No. 931-A).

In accordance with 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register,* that is, _____.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
ORDER NO. 03-14
Z.C. Case No. 03-14
(Text Amendment – 11 DCMR § 3202.5(a))
July 31, 2003

The Zoning Commission (the "Commission") for the District of Columbia, pursuant to the authority set forth in § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code § 6-641.01) (2001 Ed.) and 11 DCMR § 3030 (Consent Calendar), hereby gives notice of the adoption of an amendment to § 3202.5(a) of the Zoning Regulations (11 DCMR). The amendment inserts language inadvertently omitted from the most recent published version of Title 11 and restates language inadvertently repealed.

Because these actions are technical in nature, no hearing is required, pursuant to 11 DCMR § 3030. No changes were made to the text of the proposed rules, as published together with a notice of proposed rulemaking in the *D.C. Register* on May 16, 2003, at 50 DCR 3875. The Commission took final action to adopt the amendment at a public meeting on July 31, 2003. This final rulemaking is effective upon publication of this notice in the *D.C. Register*.

The commission initiated this rulemaking in response to a petition filed by Advisory Neighborhood Commission ("ANC") 3Fwith the Zoning Commission on March 26, 2003.

ANC 3F. By letter dated March 26, 2003, ANC 3F indicated that, at a duly-noticed public meeting, with a quorum present, the ANC voted to approve submission of the petition. By letter dated June 2, 2003, ANC 3F indicated that at a duly-noticed public meeting, with a quorum present, the ANC voted to support the proposed rulemaking, which differed slightly from the text advocated in their March 26, 2003 petition.

Proposed Rulemaking. At a special public meeting on April 28, 2003, the Commission took proposed action to approve proposed rulemaking, which was published in the *D.C. Register* on May 16, 2003, at 50 DCR 3875.

Section 3202.5 governs the way in which a building permit is processed when the Commission is considering rezoning a particular property. The following is a discussion of the history of this section and an explanation as to why a correction is needed to the text as it appears in the February 2003 edition of Title 11.

The Original 1958 Rule

The 1958 Zoning Regulations established that any application for a building permit filed before the effective date of the regulations "may be processed and any work to be authorized thereby may be carried to completion in accordance the zoning regulations in effect on the date such applications are filed" (§ 8103.6), provided that the application is accompanied by drawings, and plans (§§ 8103.6 and 8103.2). Those drawing and plans must include information necessary to determine compliance with the regulations (§ 8102.2).

When the Zoning Regulations were recodified, the provisions were renumbered 11 DCMR §§ 3202.2 and 3202.5. The text of § 3202.2 in the current version of Title 11 is unchanged from the 1958 text and indicates what a building permit application must contain. However, the text of § 3202.5 was eventually repealed. The current version of § 3202.5 was once § 3202.6. As will be explained, it was this repeal and renumbering that has engendered much of the confusion surrounding how the current version of § 3202.5 should read.

For ease of understanding, the repealed version of § 3202.5 will be referred to as "former § 3202.5" and the current version will be referred to as "renumbered § 3202.5".

The benchmark for the purposes of this discussion is January 5, 1987. Prior to that date, there was no set down rule and no § 3202.6. There was only former § 3202.5, which read as follows:

> 3202.5 All applications for building permits filed before May 12, 1958, may be processed, and any work to be authorized by the permits applied for may be carried to completion, in accordance with the Zoning Regulations in effect on the date the applications were filed; Provided, that the following requirements are met:
>
> (a) The applications shall be accompanied by the plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation;
>
> (b) Any approved building permit shall be taken out within six (6) months after May 12, 1958; and
>
> (c) All work authorized by the building permit shall be carried to completion in accordance with the terms of the permit.

Zoning Commission Order No. 517, January 5, 1987

In Order No. 516, January 5, 1987, the Commission promulgated § 3202.6, which provided that applications for a building permit filed on or before the date that the Commission makes a decision to hold a hearing on a new zoning designation would still be processed under the

designation in effect (§ 3202.6(a)), but that applications filed after the decision to hold a hearing on a new zoning designation would be processed in accordance with the proposed designation or the designation in effect, whichever is more restrictive (§ 3202.6(b)). This is commonly referred to as the "set down rule".

As promulgated, this new § 3202.6 read:

> 3202.6 If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application, and the completion of work pursuant to the permit, shall be governed as follows:
>
> (a) If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by § 3202.4 and § 3202.5;
>
> (b) If the application is filed after the date on which the Zoning Commission has made a decision to hold hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or in accordance with the most restrictive zone district classification being considered for the site. . .

Zoning Commission Order No. 562, January 19, 1988

In Order No. 562, January 19, 1988, the Commission added language to former § 3202.5(a) that required that the application be accompanied by "any fee" and by "any other plans and information which are required to permit complete review of the entire application under any applicable District of Columbia Regulations." Because new § 3202.6(a) incorporated the requirements of former § 3202.5, the language applied to the set down rule as well. The amendment resulted from building permit applications being treated as "vested" under existing zoning even though "the applicant ha[d] not filed a complete application, or paid the fee which is required for the processing of the application." Order No. 562.

After that rulemaking, the above-referenced subsections should have read as follows (added language shown in bold):

> 3202.4 All work authorized by a building permit issued before May 12, 1958, may be carried to completion in accordance with the terms of that permit.

3202.5 All applications for building permits filed before May 12, 1958, may be processed, and any work to be authorized by the permits applied for may be carried to completion, in accordance with the Zoning Regulations in effect on the date the applications were filed; Provided, that the following requirements are met:

(a) The applications shall be accompanied **by any fee which is required, and by** the plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation~~;~~**, and by any other plans and information which are required to permit complete review of the entire application under any applicable District of Columbia regulations.**

(b) Any approved building permit shall be taken out within six (6) months after May 12, 1958; and

(c) All work authorized by the building permit shall be carried to completion in accordance with the terms of the permit.

3202.6 If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application, and the completion of work pursuant to the permit, shall be governed as follows:

(a) If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by § 3202.4 and § 3202.5;

(b) If the application is filed after the date on which the Zoning Commission has made a decision to hold hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or in accordance with the most restrictive zone district classification being considered for the site. . .

Zoning Commission Order No. 588, September 15, 1988

In Order No. 588, September 15, 1988, the Commission, after rejecting requests to repeal all of § 3202.6, redrafted § 3202.4, repealed former § 3202.5, and renumbered § 3202.6 as § 3202.5. The Order does not explain why former § 3202.5 was repealed. One possible explanation is that the provision only applied to applications filed before May 12, 1958, and that it was unlikely that there were applications still pending after thirty years.

However, in repealing former § 3202.5, the Commission unfortunately overlooked the fact that the newly renumbered § 3202.5(a) still cross-referenced the repealed provision. Thus, the Commission inadvertently[1] eliminated the prerequisites to vesting it had added just nine months before.

As a result of this rulemaking, § 3202.4 and renumbered § 3202.5, should have read as follows (repealed language indicated by strike out and added language shown in bold):

3202.4 ~~All work~~ **Any construction** authorized by a building permit ~~issued before May 12, 1958,~~ may be carried to completion ~~in accordance with the terms of that permit~~ **pursuant to the provisions of this title in effect on the date that the permit is issued, subject to the following conditions:**

(a) The permit holder shall begin construction work within two years of the date on which the permit is issued; and

(b) Any amendment of the permit shall comply with the provisions of this title in effect on the date the permit is amended.

~~3202.5 All applications for building permits filed before May 12, 1958, may be processed, and any work to be authorized by the permits applied for may be carried to completion, in accordance with the Zoning Regulations in effect on the date the applications were filed; Provided, that the following requirements are met:~~

~~(a) The application shall be accompanied by any fee which is required, and by the plans and other information required by § 3202.2, which shall be sufficiently complete to permit the processing without substantial change or deviation, and by any other plans and information which are required to permit~~

[1] The petitioners point out, after reading the orders and listening to the tapes of the related hearing, that the provision was repealed without discussion.

~~complete review of the entire application under any applicable District of Columbia regulations.~~

~~(b) Any approved building permit shall be taken out within six (6) months after May 12, 1958; and~~

~~(c) All work authorized by the building permit shall be carried to completion in accordance with the terms of the permit.~~

~~3202.6~~**3202.5** If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application, and the completion of work pursuant to the permit, shall be governed as follows:

(a) If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by § 3202.4 and § 3202.5;

(b) If the application is filed after the date on which the Zoning Commission has made a decision to hold hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or in accordance with the most restrictive zone district classification being considered for the site. . .

Errors in the 1991, 1994, and 1995 Editions of Title 11

No substantive amendments to the above provisions have been made since this last amendment. Nevertheless, the versions of § 3202.5(a) that appeared in the 1991, 1994, and 1995 editions of Title 11 all contained the text of the former § 3202.5(a), rather than the text of the renumbered § 3202.5(a). The published language is shown in **bold underline**, the language that should have been published is shown in ***bold italic***.

3202.5 If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application, and the completion of work pursuant to the permit, shall be governed as follows:

(a) ***If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by § 3202.4 and § 3202.5;*** **The application shall be accompanied by any fee which is required, and by the plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation, and by any other plans and information which are required to permit complete review of the entire application under any applicable District of Columbia regulations;**

2003 Edition of Title 11

The 2003 edition of Title 11 reads (with incorrectly deleted language indicated by strikeout and incorrectly substituted language indicated in bold), in relevant part:

3202.5 If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application, and the completion of work pursuant to the permit, shall be governed as follows:

~~(a) If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by § 3202.4 and § 3202.5;~~

(a) If an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction, the processing of the application and completion of the work shall be governed by § 3202.4;

(b) If the application is filed after the date on which the Zoning Commission has made a decision to hold hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or in accordance with the most restrictive zone district classification being considered for the site. . .

As in the prior editions of Title 11, the 2003 edition leaves out the language regarding the processing of the application filed on or before the date that the Commission decides to set down a proposed rezoning for hearing. Apart from being inaccurate, the published text largely duplicates language that immediately precedes it and is entirely redundant.

Final Rulemaking

In consideration of the above discussion, the Zoning Commission concludes that the text of 11 DCMR § 3202.5 (a) as it appears in the February 2003 edition of the Zoning Regulations should be corrected and, therefore, **APPROVES** an amendment to Title 11 (DCMR) so that subsection (a) will read as follows:

> (a) If the application is filed on or before the date on which the Zoning Commission makes a decision to hold a hearing on the amendment, the processing of the application and completion of the work shall be governed by § 3202.4. The application shall be accompanied by any fee that is required, and by the plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation, and by any other plans and information that are required to permit complete review of the entire application under any applicable District of Columbia regulations;

Vote of April 28, 2003

Vote of the Zoning Commission taken at the special public meeting held on April 28, 2003, to **APPROVE** the proposed text amendment: 5-0-0 (Carol J. Mitten, Anthony J. Hood, James H. Hannaham, and John G. Parsons to approve; Peter G. May to approve by absentee vote).

Vote of July 31, 2003

The Zoning Commission at its public meeting held on July 31, 2003, **ADOPTED** this order by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and James H. Hannaham to adopt; Peter G. May, having not participated in the case, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is on _____.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 03-01
Z.C. Case No. 03-01
(Map Amendment – Square 3187, Lots 50, 823, 826, and 834)
(Chestnut Street, N.W. to Spring Place, N.W., on the east side of Blair Road, N.W., including the north side of Spring Place, N.W.)
September 8, 2003

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01), having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03), and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to 11 DCMR §§ 3025.3 and 3028.1, hereby gives notice of its adoption of an amendment to the Zoning Map of the District of Columbia that rezones Square 3187, Lots 50, 823, 826, and 834 from C-M-1 to C-2-A.

The Commission took final action to adopt the amendments at a public meeting held on September 8, 2003.

This final rulemaking is effective upon publication in the *D.C. Register*.

The purpose of this rezoning initiative is to adopt a zoning designation for the subject property that is not inconsistent with the Comprehensive Plan Amendments Act of 1994 and that implements the Takoma Plan adopted by the Council of the District of Columbia on June 4, 2002. The map amendment applies to property between Chestnut Street, N.W. and Spring Place, N.W., located on the east side of Blair Road, N.W. and including the north side of Spring Place, N.W. (Square 3187, Lots 50, 823, 826, and 834).

Prior to this amendment, the subject property was within the C-M-1, Commercial-Light Manufacturing, Zone District. The subject property is bordered by an R-1-B Zone District to the north and west and C-2-A Zone Districts to the south and east. On the west side of Blair Road, N.W. and both sides of Chestnut Street, N.W. are predominantly single-family detached houses. The subject property is located within close proximity to the Takoma Park Metrorail station and just beyond the boundary of the Takoma Park historic district. The subject property was the only industrially-zoned area in the neighborhood.

The case was initiated January 13, 2003 by the Office of Planning, which proposed to rezone the subject property from C-M-1 to C-2-A as the first step in the implementation of the Takoma

Central District Plan (Takoma Plan), approved by Council Resolution 14-460 on June 4, 2002, pursuant to Section 4(c)(4) of the District of Columbia Comprehensive Plan Act of 1984 Land Use Element Amendment Act of 1984, effective March 16, 1985 (D.C. Law 5-187; D.C. Official Code § 1-301.64(c)(4)). The Takoma Plan, which serves as supplemental guidance to the Zoning Commission in regards to the Comprehensive Plan, establishes a vision for future development, preservation, and revitalization of the Takoma commercial district.

The Zoning Map amendment designates the subject property within the C-2-A Zone District. The C-2-A Zone District is designed to provide facilities for shopping and business needs, housing, and mixed uses outside of the central core, and is located in low- and medium-density residential areas with access to main highways that include offices, shopping centers, and medium-bulk mixed-use centers. The C-2-A Zone District permits matter-of-right development standards of maximum density of 2.5 FAR (floor area ratio), of which no more than 1.5 FAR may be devoted to non-residential uses; 50-foot maximum building height; and maximum lot occupancy of 60 percent for residential development and 100 percent for non-residential development.

The Office of Planning (OP) submitted a report recommending approval of the proposed map amendment, because the requested rezoning would be consistent with the economic development, land use, housing, and zoning elements of Chapter 15, Ward 4 Plan, of the Comprehensive Plan. In particular, OP stated that the proposed map amendment would further Plan goals regarding the expansion and enhancement of retail activity near the Metrorail station (§§1505, 1506, 1529, and 1530), encouraging the multi-use character and vitality of residential and commercial uses in Takoma (§§1506 and 1530), and eliminating negative impacts from existing industrial development on nearby residential areas (§§ 1506 and 1530). OP also stated that the map amendment would support the housing objectives (§1508) by virtue of the fact that the C-M-1 Zone District prohibits residential uses, and the C-2-A Zone District permits residential uses as a matter of right with a maximum density of 2.5 FAR whereas non-residential uses are limited to a maximum density of 1.5 FAR. The Office of Planning also testified that the proposed map amendment is not inconsistent with the Comprehensive Plan Generalized Land Use Map designation of the subject lots as moderate-density commercial.

At the public hearing held March 17, 2003, Ms. Bonnie Moss, Chair of the DC Preservation Committee of Historic Takoma, entered written and oral support for the map amendment on behalf of Historic Takoma; and Ms. Faith Wheeler entered written and oral support as a citizen in favor of the map amendment. Ms. Dodie Butler, President of Plan Takoma, submitted a letter into the record in support. Advisory Neighborhood Commission (ANC) 4B recommended approval of the map amendment by resolution dated March 27, 2003. There was no opposition to the proposal. The Commission left the record open until April 4, 2003 for additional written comment pursuant to § 3024.4. No additional comments were received.

At its regularly scheduled monthly meeting on April 14, 2003, the Commission took proposed action pursuant to 11 DCMR § 3027 to approve the proposed map amendment. A Notice of Proposed Rulemaking was published in the *D.C. Register* on June 20, 2003 at 50 DCR 4989, for a 30-day notice and comment period. No comments were received. By report dated July 1, 2003, the National Capital Planning Commission found that the proposed map amendment

would neither adversely affect the federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

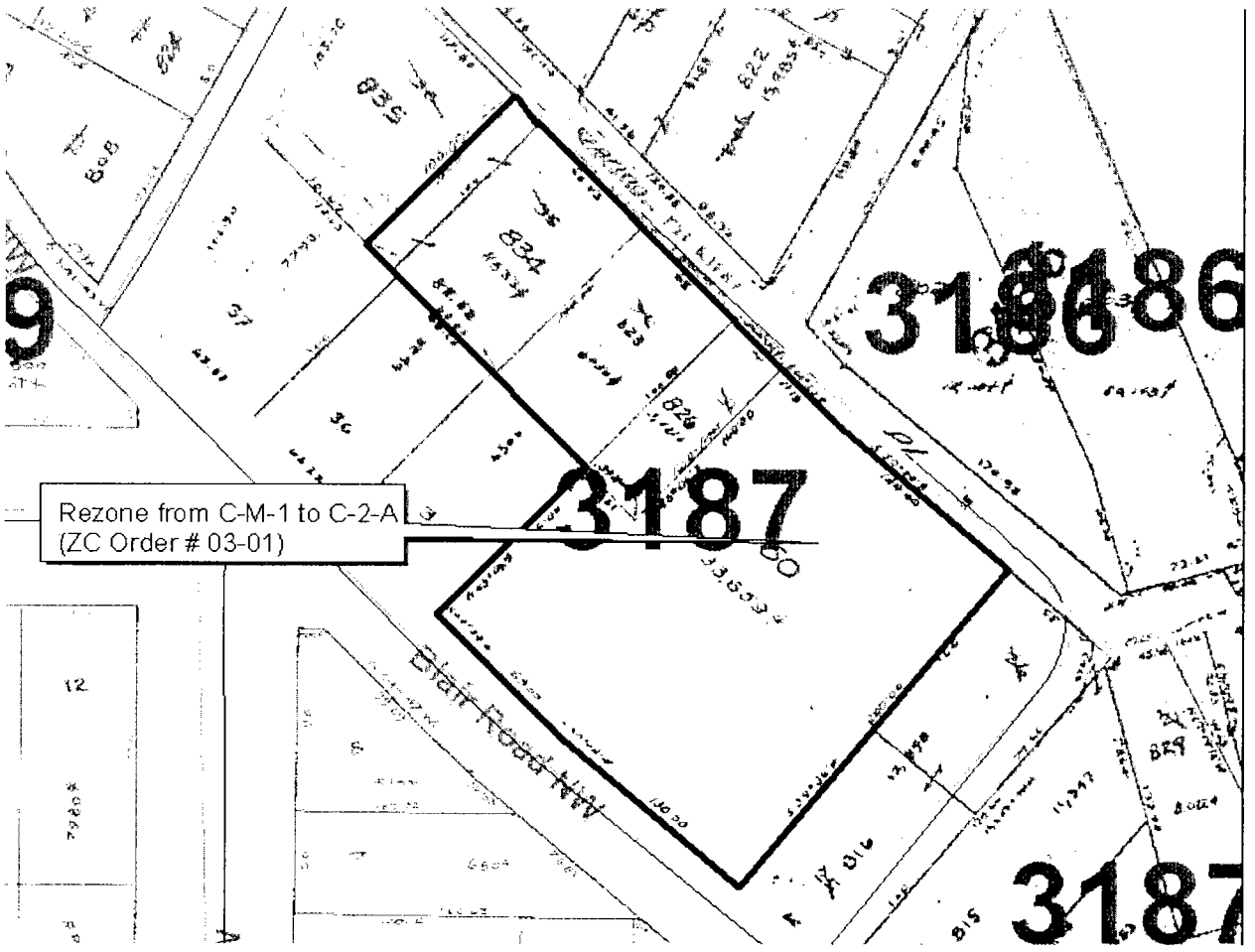
Based on the above, the Commission finds that the proposed amendment to the Zoning Map is in the best interests of the District of Columbia, consistent with the intent and purpose of the Zoning Act and the Zoning Regulations, and not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby APPROVES a change of zoning from C-M-1 to C-2-A for Chestnut Street, N.W. to Spring Place, N.W., on the east side of Blair Road, N.W., including the north side of Spring Place, N.W. (Square 3187, Lots 50, 823, 826, and 834).

Vote of the Zoning Commission taken at its public meeting on April 14, 2003 to **APPROVE** the proposed rulemaking: **5-0-0** (Carol J. Mitten, Anthony J. Hood, James Hannaham, John G. Parsons, and Peter G. May (by absentee vote) to approve).

This Order and Final Rulemaking were **ADOPTED** by the Zoning Commission at its public meeting on September 8, 2003 by a vote of **5-0-0** (Anthony J. Hood, John G. Parsons, Carol J. Mitten, James Hannaham, and Peter G. May).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*, that is, on _____.


Rezone from C-M-1 to C-2-A
(ZC Order # 03-01)
3187
3186
3187
Blair Road NW

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
and
Z.C. ORDER NO. 02-33
Z.C. Case No. 02-33
(Map Amendment – Square 4327)
(Fort Lincoln Urban Renewal Area)
July 31, 2003

The Zoning Commission for the District of Columbia, pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2001)), having held a public hearing as required by § 5 of the Act (D.C. Official Code § 6-641.05 (2001)), and having referred the proposed amendment to the National Capital Planning Commission for a 30-day period of review pursuant to that same section, hereby gives notice of the adoption of the following amendment to the Zoning Map of the District of Columbia.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 30, 2003 (50 D.C. Reg. 4279) for a 30-day notice and comment period. No comments were received. At its meeting on March 12, 2003, the National Capital Planning Commission found that the proposed map amendment to rezone a certain parcel of undeveloped land from C-3-C, SP-2, and R-5-D to C-2-B in Square 4327, bounded by New York Avenue, N.E., South Dakota Avenue, N.E., and Fort Lincoln Drive, N.E., would not negatively impact the federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital or the Fort Lincoln Urban Renewal Plan.

Prior to this amendment, the subject property – a portion of Square 4327 bounded by the east side of South Dakota Avenue, N.E., the south side of 33rd Place, N.E., and Fort Lincoln Drive, N.E.; the west side of the exit ramp between New York Avenue, N.E. and Fort Lincoln Drive, N.E.; and the north side of New York Avenue, N.E. – was zoned C-3-C, SP-2, and R-5-D. By report dated August 29, 2002, the Office of Planning ("OP") on behalf of the National Capital Revitalization Corporation Redevelopment Land Agency Revitalization Corporation petitioned the Commission to rezone the subject property to a new zoning designation, C-2-B. OP asserted that the rezoning is needed to satisfy the District's obligation to ensure conformity with the Fort Lincoln Urban Renewal Plan designation for the subject property as the site for retail – shopping development within the Fort Lincoln Urban Renewal Area. By report dated November 15, 2002, OP recommended the map amendment, citing the conformity of the amendment to the Fort Lincoln Urban Renewal Plan and the Comprehensive Plan.

The Commission, at the February 24, 2003, public meeting, took proposed action to approve the rezoning of a portion of Square 4327 bounded by the east side of South Dakota Avenue, N.E., the south side of 33rd Place, N.E., and Fort Lincoln Drive, N.E.; the west side of the exit ramp

between New York Avenue, N.E. and Fort Lincoln Drive, N.E.; and the north side of New York Avenue, N.E. to C-2-B. The Commission noted that the record was left open to receive additional information following the hearing. Advisory Neighborhood Commission 5A voted to support the amendment. The Fort Lincoln Civic Association opposed the amendment. OP filed a supplemental report dated February 7, 2003, in support of the rulemaking.

Based on the above, the Commission finds that the proposed amendment to the Zoning Map is in the best interests of the District of Columbia, consistent with the intent and purpose of the Zoning Act and the Zoning Regulations, and not inconsistent with the Comprehensive Plan for the National Capital.

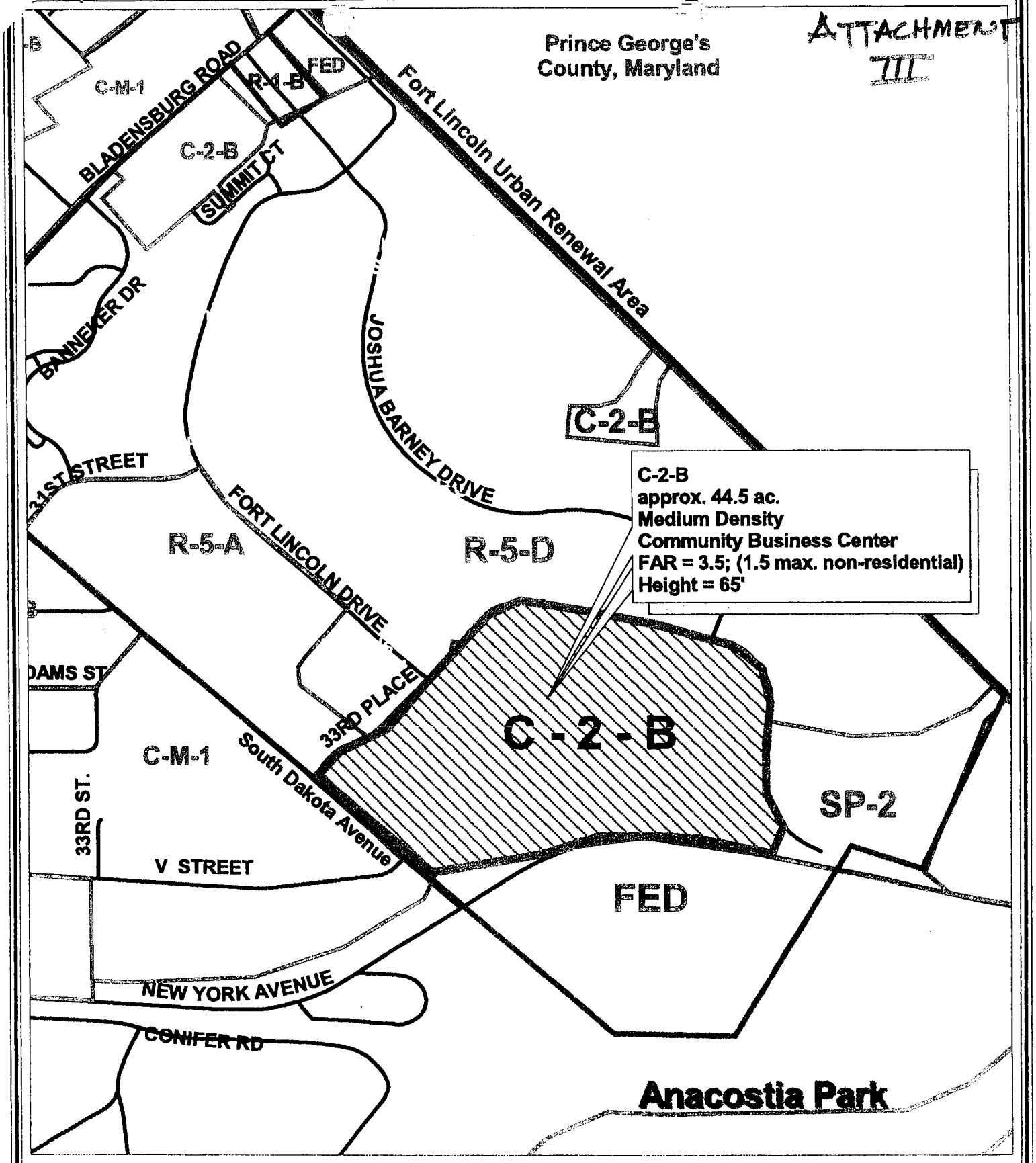
In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby **APPROVES** a change in zoning from C-3-C, SP-2, and R-5-D to C-2-B for a portion of Square 4327 bounded by the east side of South Dakota Avenue, N.E., the south side of 33rd Place, N.E. and Fort Lincoln Drive, N.E., the west side of the exit ramp between New York Avenue, N.E. and Fort Lincoln Drive, N.E., and the north side of New York Avenue, N.E.

Vote of the Zoning Commission taken at its public meeting on February 24, 2003, to **APPROVE** the proposed rulemaking: **3-2-0** (Carol J. Mitten, Anthony J. Hood, and James H. Hannaham to approve; John G. Parsons and Peter G. May against).

This Order and Final Rulemaking were **ADOPTED** by the Zoning Commission at its public meeting on July 31, 2003, by a vote of **3-2-0** (Carol J. Mitten, Anthony J. Hood, and James H. Hannaham to adopt; Peter G. May and John G. Parsons against).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*, that is, on _____.

ATTACHMENT III



Feature Key

Zoning Boundaries

Site

Zoning Commission Case # 02-33, Fort Lincoln
PROPOSED ZONING

DC Office of Planning
January 8, 2003

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